

Assembly Bill No. 3320

CHAPTER 785

An act to amend Section 17538 of the Business and Professions Code, relating to sales.

[Approved by Governor September 21, 1996. Filed
with Secretary of State September 23, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3320, Speier. Telephone, mail order, and catalog sales: Internet.

Existing law regulates the sale, lease, or offering for sale or lease of goods or services by telephone, mail order, or catalog.

This bill would expand those provisions to apply to sales or leases conducted using the Internet. The bill would require a vendor conducting business through the Internet or any other electronic means of communication to make specified disclosures to a buyer. A violation of these provisions would be a misdemeanor, thus the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 17538 of the Business and Professions Code is amended to read:

17538. (a) It is unlawful in the sale or lease or offering for sale or lease of goods or services, for any person conducting sales or leases by telephone, Internet or other electronic means of communication, mail order, or catalog in this state, including, but not limited to, the offering for sale or lease on television, radio, Internet, or other electronic means of communication or telecommunications device of goods or services which may be ordered by mail, telephone, Internet, or other electronic means of communication or telecommunications device, or for any person advertising in connection with those sales, leases, or advertisements a mailing address, telephone number, or Internet or other electronic address, to accept payment from or for a buyer, for the purchase or lease of goods or services ordered by mail, telephone, Internet, or other electronic means of communication or telecommunications device, whether payment to the vendor is made

directly, through the mails, by means of a transfer of funds from an account of the buyer or any other person, or by any other means, and then permit 30 days, unless otherwise conspicuously stated in the offering or advertisement, or unless a shorter time is clearly communicated by the person conducting the sale or lease, to elapse without doing any one of the following things:

(1) Shipping, mailing, or providing the goods or services ordered.

(2) Mailing a full refund or, if payment was made by means of a transfer from an account, (A) crediting the account in the full amount of the debit, or (B) if a third party is the creditor, issuing a credit memorandum to the third party who shall promptly credit the account in the full amount of the debit.

(3) Sending the buyer a letter or other written notice (A) advising the buyer of the duration of an expected delay expressed as a specific number of days or weeks, or proposing the substitution of goods or services of equivalent or superior quality, and (B) offering to make a full refund, in accordance with paragraph (2), within one week if the buyer so requests. The vendor shall provide to the buyer in that letter or written notice a toll-free telephone number or other cost-free method to communicate the buyer's request for a full refund. If the vendor proposes to substitute goods or services, the vendor shall describe the substitute goods or services in detail, indicating fully how the substitute differs from the goods or services ordered.

(4) (A) Shipping, mailing, or providing substitute goods or services of equivalent or superior quality, if the buyer is extended the opportunity to return the substitute goods or services and the vendor promises to refund to the buyer (i) the cost of returning the substitute goods or services and (ii) any portion of the purchase price previously paid by the buyer.

(B) Except as provided in subparagraph (C), a notice to the buyer shall accompany the mailing, shipping, or providing of the substitute goods or services which informs the buyer of the substitution; describes fully how the substitute differs from the goods or services ordered, except that obvious nontechnical differences, such as color, need not be described; and discloses the buyer's right to reject the substitute goods or services and obtain a full refund of the amount paid, plus the cost of returning the substitute goods or services.

(C) The vendor may omit from the notice required by subparagraph (B) a description of how the substitute goods or services differ from the ordered goods or services if the notice otherwise complies with subparagraph (B), and if all the following requirements are complied with:

(i) The vendor maintains at least 100 retail outlets located in at least 20 counties in this state that are open to the public regularly during normal business hours where buyers can order catalog goods, pick them up, and return them for refunds.

(ii) The vendor maintains a toll-free telephone number and provides to each buyer, at the time of the buyer's call, a full description of how substitute goods or services differ from ordered goods or services. The toll-free telephone number shall operate and be staffed at all times during which goods or services normally are available for pick up from the vendor's retail outlets.

(iii) If the buyer picks up substitute goods or services from the vendor's retail outlet, the notice required by subparagraph (B) as modified by this subparagraph is placed on, or attached to, the exterior of the package or wrapping containing the substitute, or is handed to the buyer at the time the buyer picks up the substitute.

(iv) The notice contains a reference number or some other means of identifying the ordered goods or services and the substitute goods or services.

(v) The notice contains the vendor's toll-free telephone number and instructions to the buyer that the buyer may call that number to obtain a full description of how the substitute differs from the ordered goods.

(b) For purposes of paragraphs (3) and (4) of subdivision (a), goods or services shall be considered of "equivalent or superior quality" only if they are (1) substantially similar to the goods or services ordered, (2) fit for the usual purposes for which the goods or services ordered are used, and (3) normally offered by the vendor at a price equal to or greater than the price of the goods or services ordered.

(c) When a buyer makes an initial application for an open-end credit plan, as defined in the Federal Consumer Credit Protection Act (15 U.S.C. Sec. 1682), at the same time the goods or services are ordered, and the goods or services are to be purchased on credit, the person conducting the business shall have 50 days, rather than 30 days, to perform the actions specified in this section.

(d) A vendor conducting business through the Internet or any other electronic means of communication shall do all of the following when the transaction involves a buyer located in California:

(1) Before accepting any payment or processing any debit or credit charge or funds transfer, the vendor shall disclose to the buyer in writing or by electronic means of communication, such as E-mail or an on-screen notice, the vendor's return and refund policy, the legal name under which the business is conducted and, except as provided in paragraph (3), the complete street address from which the business is actually conducted.

(2) If the disclosure of the vendor's legal name and address information required by this subdivision is made by on-screen notice, all of the following shall apply:

(A) The disclosure of the legal name and address information shall appear on any of the following: (i) the first screen displayed when the vendor's electronic site is accessed, (ii) on the screen on which goods



or services are first offered, (iii) on the screen on which a buyer may place the order for goods or services or (iv) on the screen on which the buyer may enter payment information, such as a credit card account number. The communication of that disclosure shall not be structured to be smaller or less legible than the text of the offer of the goods or services.

(B) The disclosure of the legal name and address information shall be accompanied by an adjacent statement describing how the buyer may receive the information at the buyer's E-mail address. The vendor shall provide the disclosure information to the buyer at the buyer's E-mail address within five days of receiving the buyer's request.

(C) Until the vendor complies with subdivision (a) in connection with all buyers of the vendor's goods or services, the vendor shall make available to a buyer and any person or entity who may enforce this section pursuant to Section 17535 on-screen access to the information required to be disclosed under this subdivision.

(3) The complete street address need not be disclosed as required by paragraph (1) if the vendor utilizes a private mailbox receiving service and all of the following conditions are met: (A) the vendor satisfies the conditions described in paragraph (2) of subdivision (b) of Section 17538.5, (B) the vendor discloses the actual street address of the private mailbox receiving service in the manner prescribed by this subdivision for the disclosure of the vendor's actual street address, and (C) the vendor and the private mailbox receiving service comply with all of the requirements of subdivisions (c) to (f), inclusive, of Section 17538.5.

(e) As used in this section and Section 17538.3, the following words have the following meanings:

(1) "Goods" means tangible chattels, including certificates or coupons exchangeable for those goods, and including goods which, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of that real property, whether or not severable therefrom.

(2) "Person" means an individual, partnership, corporation, association, or other group, however organized.

(3) "Buyer" means a person who seeks or acquires, by purchase or lease, any goods or services for any purpose.

(4) "Services" means work, labor, and services, including services furnished in connection with the sale or repair of goods.

(5) "Vendor" means a person who, as described in subdivision (a), vends, sells, leases, supplies, or ships goods or services, who conducts sales or leases of goods or services, or who offers goods or services for sale or lease. "Vendor" does not include a person responding to an electronic agent in connection with providing goods or services to a buyer if the aggregate amount of all transactions with the buyer does not exceed ten dollars (\$10).



(6) “Internet” means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP), or its subsequent extensions; and is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols; and provides, uses, or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described herein.

(7) “Electronic agent” means a computer program designed, selected, or programmed to initiate or respond to electronic messages or performances without review by an individual.

(f) Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

